IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8130 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DA MEHTA
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR MURALI N DEVNANI for Petitioner No(s).: 1.
MS NANDNI JOSHI, AGP for Respondent No(s).: 1,2.
NOTICE SERVED BY DS for Respondent No(s).: 1,2.

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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date : 27/07/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner has challenged the order passed by the department by which the department started recovering an amount

of Rs.2,000/- (Rupees Two Thousand Only) from the salary of the petitioner on the ground that his pay was wrongly fixed at the relevant time and, therefore, according the the department, the petitioner is required to repay the amount of arrears.

2. Learned advocate Mr.Devnani for the petitioner submitted that initially, the order of recovery was passed without hearing the petitioner and, therefore, the petitioner had filed Special Civil Application No.13244 of 2001 wherein, learned Single Judge of this Court was pleased to allow that petition by order dated 19.12.2001 and the department was directed to hear the petitioner before passing any order of recovery. Mr.Devnani submitted that thereafter, the petitioner was permitted to make representation to the department and the said representation is rejected by an order which is at page No.51 of the compilation. It is argued by Mr.Devnani that the petitioner was not instrumental in getting

the benefit of higher pay scale as the department on its own volition gave it and on the ground of that so- called mistake in giving such benefit, the orders of cancellation of higher pay scale benefit as well as consequential order of recovery are passed. This petition is confined only regarding the question of recovery of the amount in question. Mr.Devnani has relied upon the decision of the learned Single Judge of this Court, reported in (2003) 1 G.L.H. 668 wherein this Court has held that if an employee is not at fault in the matter of wrong fixation of pay, he cannot be subjected to recovery of the amount. In the instant case also, it is not the say of the department that the petitioner was in any way instrumental in such fixation or for such benefit of higher pay scale and it is not in dispute that the petitioner was in any way instrumental in getting such benefit. It is not open for the department to effect any recovery from the salary of the petitioner.

3. Learned AGP Ms.Nandini Joshi argued that this Court as remanded the matter back only for the purpose of hearing regarding recovery. She submitted that so far as re-fixation of the pay scale of the petitioner is concerned, it has rightly been done for which she has relied upon the observation made by the learned Single Judge of this Court in Special Civil Application No.13244 of 2001 which is as under:

> ".....Needless to say that it would be open to the authorities to rectify the mistake committed by the concerned officer, but before rectification of the mistake, the government authorities should give hearing to the petitioner and only after hearing the petitioner and considering the case objectively, appropriate decision should be taken by the government".

Relying upon the same, she submitted that so far as re-fixation which is now carried out by the department is concerned, that is a correct

decision. However, since this petition is confined only to recovery part, in my view, such recovery cannot be effected as such also. On the aforesaid point, the petition is required to be allowed.

4. Mr.Devnani further submitted that in view of this order, even annual increment of the petitioner is not released and for the same, he would like to make representation before the authority. If any representation is made, it is for the authority to decide the same in accordance with law.

5. In my view, it is not open to the department to recover any amount on the basis of wrong fixation of the pay scale of the petitioner or for giving wrong benefit of higher pay scale to the petitioner. If any amount is recovered from the petitioner's salary, the same shall be refunded to the petitioner. Rule is made absolute accordingly with no order as to costs.

(P.B.MAJMUDAR, J.)

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